

Why Canada Cares

Human Rights and Foreign Policy in Theory and Practice

ANDREW LUI



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Dedicated to

KEN BOOTH, RHODA HOWARD-HASSMANN,
AND MY PARENTS, EDWARD AND CATHERINE.

Acknowledgments

This book grew out of a doctoral dissertation that I began in September 2001 and completed in March 2006 at the University of Wales, Aberystwyth. Without doubt, the task of completing a PhD invokes images of solitude and sacrifice – perhaps even more so when it is done in a place as remote as Aberystwyth. The allure of foreign shores and studying at the world's first department of international politics, where E.H. Carr wrote *The Twenty Years' Crisis*, seemed, at the time, to be worth the solitude and sacrifice that would become part and parcel of life in Aber. In the end, my Aber years were fortunate ones if only because of the sheer strength of the department and because of some outstanding individuals with whom my journey was shared. In their absence, the task of completing this project would simply not have been possible.

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Abbreviations

CBC	Canadian Broadcasting Corporation
CIDA	Canadian International Development Agency
CIIA	Canadian Institute of International Affairs
CSCE	Conference on Security and Cooperation in Europe
DFAIT	Department of Foreign Affairs and International Trade
DND	Department of National Defence
ECOSOC	Economic and Social Council
FLQ	Front de Libération du Québec
FPA	Foreign Policy Analysis (re: scholarly field of study)
FTA	Free Trade Agreement
GNP	gross national product
ICC	International Criminal Court
ICISS	International Commission on Intervention and State Sovereignty
IR	International Relations (re: scholarly field of study)
ISA	International Studies Association
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
NGOS	non-governmental organizations
NORAD	North American Air Defence Command
OAS	Organization of American States
ODA	Official Development Assistance
PMO	Prime Minister's Office
R2P	Responsibility to Protect
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme

UNPROFOR

United Nations Protection Force

USSR

Union of Soviet Socialist Republics

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WHY CANADA CARES

Introduction: Canada, Human Rights, and International Relations

Human rights have become a taken-for-granted fixture of Canada's international relations and an entrenched part of its national mythology. Yet given the gravity of human rights issues, and how Canada seems to champion their cause, the role of human rights in Canadian foreign policy has received surprisingly little scrutiny.¹ Rarely challenged is the claim that Canada is a leading advocate of international human rights. Few notice when official government statements stray from historical fact or wade into the waters of propaganda. According to the Department of Foreign Affairs and International Trade (DFAIT), for example, "Canada has been a consistently strong voice for the protection of human rights and the advancement of democratic values, from [its] central role in the drafting of the Universal Declaration of Human Rights in 1947/1948 to [its] work at the United Nations today."² In fact, this claim is a serious misrepresentation of Canada's role in the framing of the Universal Declaration of Human Rights (UDHR), laying bare the need to revisit this period as a reminder of the country's initial attitudes towards international human rights policies.

As William Schabas evinces, Canadian policymakers approached the UDHR with a mix of scepticism, indifference, and outright hostility.³ Far from playing a central role in drafting the landmark document, the Canadian government attempted to scuttle or delay its release as much as possible. In the fall of 1948, as delegations from around the world convened for the Paris session of the UN General Assembly, Canada made both formal and informal requests to postpone the adoption process on the pretext that more time was needed to clarify the meaning, content, and legality of human rights.

Canada's concerns were fuelled in part by a report issued earlier that year by the Special Joint Committee of the Senate and the House of Commons

on Human Rights and Fundamental Freedoms. Although the report was sympathetic to the objectives of the Declaration, it outlined Parliament's reservations about specific clauses and made several recommendations for amendments. Most acutely, the parliamentary committee suggested that, in the opening passage of the Declaration, "God" be referenced as the progenitor of all rights (an amendment later proposed by Brazil but that, given its lack of universal appeal, was ultimately struck down).⁴ The committee also remarked that many articles were excessively broad, which might allow certain groups – Communists, Aboriginal peoples, Jehovah's Witnesses, and Japanese Canadians among others – undue reprieve from federal and provincial laws designed to circumscribe their subversive tendencies.⁵ In debating the article on the right to life, the committee noted that capital and corporal punishment should remain a state prerogative. Economic and social rights were treated with equal scepticism as the committee stressed that these would impinge on the duties and authority of the state. Overall, the parliamentary committee and other Canadian policymakers in the highest offices believed that economic and social rights as well as select civil and political rights – such as freedom of speech, freedom of religion, and freedom of association – did not belong in the Declaration at all.⁶

Canadian diplomats went to Paris with these reservations in hand. As the negotiations unfolded, however, it became clear that substantive amendments to the draft Declaration were next to impossible.⁷ Coming to this realization, Acting Prime Minister Louis St Laurent – who, like William Lyon Mackenzie King before him, harboured personal misgivings about the notion of human rights – ordered his diplomats to avoid playing any prominent role in the deliberations. The government then turned to procedural arguments in its continuing effort to obstruct the Declaration's advance. The favoured rejoinder of an increasingly hostile Canadian camp was that the UDHR would violate federal-provincial jurisdiction in Canada. More specifically, the Canadian government argued that the division of political authority between the federal and provincial legislatures prevented Ottawa from supporting a document over which it lacked exclusive domestic control. But this assertion was little more than the government's crying wolf. The parliamentary committee had already established that the UDHR would not require any legislative action as declarations are legally non-binding. And, as the objection had no real grounds, it was not raised by any other federal state taking part.

Canada's antagonism and stonewalling would prove to be isolating and embarrassing. On 7 December 1948, Canada was the only country, alongside

the Soviet bloc, to abstain on a crucial vote that would approve the final draft of the UDHR before its submission to the General Assembly for adoption. Lester B. Pearson, then secretary of state for external affairs, was forced to defend Canada's position by rehashing the argument about federal jurisdiction. Yet his rebuttal could scarcely conceal the Canadian government's substantive objections to a universal definition of human rights. Canada was still not prepared to accept a notion of rights that applied universally and inalienably to all individuals.⁸ The sceptics and detractors were led, moreover, by none other than the revered architects of the so-called "golden age" of Canadian foreign policy – elder statesmen from Mackenzie King to Pearson – who charted the course of international relations during exceptional moments in history only to delimit human rights at home and abroad.

Ultimately, Canada voted in favour of the UDHR in the General Assembly on 10 December 1948 after continued pressure from the British and American delegations and after finding itself in the company of the Soviet bloc just three days earlier. John Peters Humphrey, Canadian legal scholar, first director of the United Nations Division of Human Rights, and the person credited as the principal drafter of the UDHR, would nonetheless describe Canada's role in international human rights over the next two decades as being uniformly negative.⁹ And yet this chequered history with human rights runs clearly against the grain of popular sentiment and official rhetoric. As Louise Arbour, former UN high commissioner for human rights and justice of the Supreme Court of Canada, comments: "This is hardly the story we [Canadians] might imagine given our national self-perception."¹⁰ Even so, it is exactly how the story begins.

Today, this story remains relevant not least because of the many questions it leaves unanswered. The fact that Canada underperformed on human rights from the very start of the postwar era needs to be explained. How and when Canada then changed course from laggard to leader is also something that has never been fully addressed. Put simply, the study of human rights in Canadian foreign policy has received an inadequate amount of scholarly attention. Higher benchmarks are needed to correct false assertions (such as the one made by D'FAIT, cited above) and to thereby measure the disparity between rhetoric and reality that continues to impede the international human rights policies of Canada and other countries. Empirical studies that examine this disparity are lacking. So too are explanatory frameworks that can isolate the factors that prompted countries such as Canada to undergo significant changes with respect to international human rights.

Above all, the lack of scholarship in this area is systemic, arising from a persistent divide within the existing canon of Foreign Policy Analysis (FPA) between realist and constructivist approaches to the study of International Relations (IR).¹¹ On the one hand, realists contend that human rights do not matter in international relations given the primacy of utilitarian notions of the national interest. From this perspective, the pursuit of material interests such as state security and economic prosperity preoccupy the thrust of statecraft. Accordingly, sovereignty and non-intervention by and large take precedence over the idea that all individuals have inviolable rights simply for being human.¹² Constructivists, on the other hand, emphasize that human rights have figured prominently at defining moments in international politics and are crucial in constituting the interests, identities, and international norms that collectively shape state behaviour. As Neta C. Crawford explains, for example, human rights arguments were an imperative for the demise of slavery and colonialism, which prompted "the biggest change in the structure and practice of international relations in the last 500 years."¹³ And the way that human rights have begun to challenge sovereignty claims through institutions such as the International Criminal Court (ICC) may signal yet more profound changes in the future.¹⁴

These seemingly contradictory positions have polarized debate in international relations as researchers are caught between two competing paradigms: one that privileges macro, top-down determinants of state behaviour and another that privileges micro, bottom-up determinants. Asking whether human rights are *either* a function of states' material interests *or* a function of their social identities presents a misleading dichotomy that has stalled the advance of our understanding of the role of human rights in international relations. Is there a way out of the current impasse?

In this book I explore the role of human rights in foreign policy by offering a comparative theoretical analysis of Canada's international relations since 1945. My central claim is that, with respect to the Canadian case, not only are both realist and constructivist approaches relevant to the study of human rights but also that both must be treated in a complementary rather than in a competitive manner. Realism provides an undeniably useful explanatory framework for the inconsistencies and shortfalls of Canada's international human rights policies. The fact is that Canada has rarely, if ever, proven willing to sacrifice material advantage for international human rights. The utilitarian mainsprings of state behaviour remain a consistent feature of international relations. Yet structural realism cannot fully explain

what compelled Canada, and other states, to actively pursue international human rights policies in the first place. A constructivist identity-based perspective is needed in order to provide the missing explanatory parts.

The constructivist narrative I offer here presents Canadian identity as a historically recent and occasionally volatile project. Canada is physically vast, culturally diverse, and historically contested. Colonialism (the legacy of conquest over the peoples of the First Nations) and successive waves of immigration (first from Europe and then the rest of the world) have created cleavages across the country's disparate provinces and territories. One of the deepest and most troublesome divides concerns the role and place of the Province of Quebec in Canada's federal system. This divide would test the resolve of Canadians as the separatist movement in Quebec gathered pace in the 1960s, leading not only to political confrontation at the ballot box but also to the formation of terrorist networks such as the Front de Libération du Québec (FLQ), which would perpetrate the violent attacks of the 1970 October Crisis. These events would leave an indelible mark on Canadian politics. While recognizing that other factors were at play, measures to institutionalize human rights in Canada came primarily as a reaction to the acute threat of internal violence and fragmentation. In response, the Canadian government under Prime Minister Pierre Elliott Trudeau enacted constitutional guarantees for individual human rights as a necessary counterweight to potentially debilitating confrontations between the country's diverse groups.

The struggle for human rights in Canada would extend beyond the domestic frontier, however, as the federal government manoeuvred around provincial governments (such as Quebec) that were beginning to compete for jurisdiction in international relations. Human rights thus became a source of legitimacy from which the federal government could assert its authority by externally projecting a particular self-image of Canada as a just society that was undivided despite its diversity. Human rights concerns therefore played a key role in laying the contemporary foundations for Canadian federalism. In short, I argue that the role of human rights in Canadian foreign policy originated in its ability to forge internal national ties, to affirm the sovereign authority of the Canadian government, and to mitigate the potential for future conflict.¹⁵ Human rights policies were pursued not because of changes in an essentialist notion of identity but, rather, as part of an aspirational sense of identity – a broader vision of what Canadian society *should* look like in order to survive as a coherent, unified political entity.